



U.S. Department of Justice FY 2019 PERFORMANCE BUDGET

Office of the Inspector General

Congressional Justification



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I. Overview (Office of the Inspector General)

A. Introduction

In Fiscal Year (FY) 2019, the President's budget request for the Department of Justice (DOJ) Office of the Inspector General (OIG) totals \$95.866 million, 421 FTE, and 476 positions for the OIG (of which 132 are Agents and 33 are Attorneys) to investigate allegations of fraud, waste, abuse, and misconduct by DOJ employees, contractors, and grantees and to promote economy and efficiency in Department operations. This amount represents an increase of approximately \$932,000, which is approximately 1% above the FY 2018 annualized continuing resolution level after rescission and consists of technical and base adjustments, which include an Administrative Reduction of 15 FTEs and \$2.188 million, and a program increase of \$1.4 million and 6 FTEs for the whistleblower program. Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address:

<http://www.justice.gov/02organizations/bpp.htm>.

Inspector General's Comments:

The *Inspector General Act* (IG Act) requires me to submit a separate message to Congress when "the Inspector General concludes that the budget submitted by the President would substantially inhibit the Inspector General from performing the duties of the office." (Section 6(f)(3)(E)). The IG Act also requires me to inform Congress of the budget estimate we independently proposed. (Section 6(f)(3)(A)).

Consistent with these requirements, I have concluded that the President's FY 2019 budget request for the DOJ's Office of the Inspector General (OIG) of \$95.886 million—which would essentially keep the OIG's budget flat in FY 2018 and FY 2019 even as budgets for other Department law enforcement components such as the Federal Bureau of Investigation (FBI) are recommended for increases during that same period—would "significantly inhibit" our oversight work on behalf of the U.S. taxpayers. That is because keeping the OIG's budget essentially flat for the next 2 years will require the OIG to reduce our staffing levels by approximately 4%, or 25 FTE.

Pending before Congress is my FY 2018 budget request of \$97.380 million, which is \$1.797 million above our enacted FY 2017 level and would allow the OIG to simply maintain its current services into FY 2018. I am submitting to Congress these comments in connection with the FY 2019 budget process, and respectfully request that the OIG be funded at \$100.106 million in FY 2019. Funding at \$100.106 million represents a modest increase from our FY 2018 budget request of \$97.380 million, and will allow the OIG to maintain its current services into FY 2019, have budget parity with other DOJ law enforcement components, hire five additional lawyers and one non-lawyer to handle the substantial increase in FBI and other whistleblower retaliation matters that we are investigating, and permit us to sustain our efforts to curb waste, fraud, and abuse in DOJ programs.

The OIG promotes efficiency and effectiveness in DOJ programs and holds DOJ officials accountable for misconduct. Our work strengthens the public's confidence in the Department and its ability to ensure fair and impartial administration of the law. In FY 2017, the OIG recovered nearly \$28 million in funds as a result of our investigations, audits, and reviews, and issued 77 audit reports identifying an additional \$27 million in potential cost savings. In

addition, our Agents conducted investigations that led to the filing of approximately 100 indictments and informations, and over 200 administrative misconduct actions. Some of the significant completed and ongoing OIG work over the past year includes:

- A review of allegations regarding various actions by the Department and the FBI in advance of the 2016 Presidential elections;
- A report highlighting systemic problems in DOJ's handling of sexual misconduct and harassment complaints;
- An audit identifying weaknesses in *Foreign Agents Registration Act* (FARA) enforcement that has resulted in recent legislative reform efforts;
- Expanding our oversight of DOJ's \$21.4 billion portfolio of grants, cooperative agreements, and contracts to ensure that they are administered efficiently and effectively, and to identify and recover any wasted funds; and
- Protecting DOJ, FBI, and contractor employees from retaliation for whistleblowing, while leading the IG community's efforts to educate employees about their whistleblower rights and responsibilities.

We appreciate the support we have received both from the Department's leadership and Congress for this important oversight work. However, in order for the OIG to continue to promote more efficient and effective DOJ programs, and to continue to conduct effective oversight of the Department's largest components, the OIG must be adequately funded. In particular, it is critical that the OIG's budget at least maintain parity with the budgets of the DOJ components that we regularly oversee, most importantly the FBI, the DOJ's other law enforcement components, the Federal Bureau of Prisons (BOP), and the DOJ grant-making components. Regrettably, the President's FY 2019 budget request for the OIG does not meet this goal, particularly when considered in conjunction with the proposed cut to the OIG's budget in the President's FY 2018 budget (which we appealed to Congress last year).

For FY 2019, the President has requested a budget for the OIG of \$95.866 million, 421 FTE, and 476 positions. This budget amount is roughly comparable to our current FY 2017 enacted budget of \$95.583 million. We estimate that, in order to maintain our current FY 2017 staffing levels into FY 2019 based on our currently enacted FY 2017 appropriation level, the OIG would need to receive modest budget increases of \$1.797 million in FY 2018 and \$1.326 million in FY 2019, respectively. The OIG cannot maintain its current level of work without these current services increases to our budget because, as noted above, absent these increases the OIG would need to reduce its staffing by approximately 4%, or 25 FTE. In addition to this current services increase, the OIG is requesting a program increase in FY 2019—which the Department and the Office of Management and Budget (OMB) both support—of \$1.4 million to hire five additional attorneys and one non-lawyer to handle the substantial increase in FBI and other whistleblower retaliation investigations that the OIG has seen over the past few years.

The OIG cannot effectively oversee the Department's largest components if their budgets and staff grow disproportionately to ours. DOJ law enforcement components comprise approximately 80% of the Department's budget. Unlike most of these entities, about 98% of the OIG's budget is comprised of salaries (including benefit costs) plus fixed mandatory costs consisting of rent, telecommunications, and information technology infrastructure, including our nascent data analytics initiative. As a result, if we were to receive a flat budget for a 2-year period at the same time that our mandatory expenses were increasing, we would have no choice but to reduce our auditor, agent, investigator, and the support staffing levels. Doing so would

substantially and negatively impact our DOJ oversight by requiring us to cut OIG staff at the same time that the Department's law enforcement components were being proposed for budget levels that will allow them to maintain or increase their staffing levels.

Moreover, this necessary cut to our staff would harm our capacity to handle in a timely fashion the significantly increased number of whistleblower retaliation allegations that the OIG has received over the past several years. This substantial increase in the number of such whistleblower retaliation cases caused us to seek a program enhancement that would allow the OIG to add staff to effectively handle these important matters. While the President's FY 2019 budget supports a \$1.4 million program enhancement to handle these cases, it at the same time recommends an even larger budget rescission of \$2.188 million, thus not only making it impossible for the OIG to enhance our staffing in this critical area but requiring the OIG to reduce our overall staffing levels for the reasons described earlier. Accordingly, our efforts to protect FBI and Department contractor employees from retaliation will suffer, as will our ability to oversee the Department more generally.

Thank you for considering these comments and for your consistent and strong support for the important mission of the DOJ OIG. Investing in the OIG is perhaps the most effective way of curbing waste and promoting better and more efficient government. We therefore respectfully ask that Congress fund the OIG at a level of \$100.106 million in FY 2019.

B. Background

The OIG was statutorily established in the Department on April 14, 1989. The OIG is an independent entity within the Department that reports to both the Attorney General and Congress on issues that affect the Department's personnel or operations.

The OIG has jurisdiction over all complaints of misconduct against DOJ employees, including the FBI; Drug Enforcement Administration (DEA); BOP; U.S. Marshals Service (USMS); Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); United States Attorneys' Offices (USAO); Office of Justice Programs (OJP); and other Offices, Boards and Divisions. The one exception is that allegations of misconduct by a Department attorney or law enforcement personnel that relate to the exercise of the Department attorneys' authority to investigate, litigate, or provide legal advice are the responsibility of the Department's Office of Professional Responsibility (OPR).

The OIG investigates alleged violations of criminal and civil law, regulations, and ethical standards arising from the conduct of Department employees in their numerous and diverse activities. The OIG also audits and inspects Department programs and assists management in promoting integrity, economy, efficiency, and efficacy. The Appendix contains a table that provides statistics on the most recent semiannual reporting period. These statistics highlight the OIG's ongoing efforts to conduct wide-ranging oversight of Department programs and operations.

C. OIG Organization

The OIG consists of the Immediate Office of the Inspector General and the following five divisions and one office:

- Audit Division is responsible for independent audits of Department programs, computer systems, and financial statements. The Audit Division has regional offices in Atlanta, Chicago, Denver, Philadelphia, San Francisco, and Washington, D.C. Its Financial

Statement Audit Office and Computer Security and Information Technology Audit Office are located in Washington, D.C. Audit Headquarters consists of the immediate office of the Assistant Inspector General for Audit, Office of Operations, Office of Policy and Planning, and Advanced Audit Techniques.

- Investigations Division is responsible for investigating allegations of bribery, fraud, abuse, civil rights violations, and violations of other criminal laws and administrative procedures governing Department employees, contractors, and grantees. The Investigations Division has field offices in Chicago, Dallas, Denver, Los Angeles, Miami, New York, and Washington, D.C. The Fraud Detection Office and the Cyber Investigations Office are located in Washington, D.C. The Investigations Division has smaller area offices in Atlanta, Boston, Trenton, Detroit, El Paso, Houston, San Francisco, and Tucson. Investigations Headquarters in Washington, D.C., consists of the immediate office of the Assistant Inspector General for Investigations and the following branches: Operations, Operations II, Investigative Support, and Administrative Support.
- Evaluation and Inspections Division conducts program and management reviews that involve on-site inspection, statistical analysis, and other techniques to review Department programs and activities and makes recommendations for improvement.
- Oversight and Review Division blends the skills of attorneys, investigators, program analysts, and paralegals to review Department programs and investigate sensitive allegations involving Department employees and operations, and manage the whistleblower program.
- Management and Planning Division provides advice to OIG senior leadership on administrative and fiscal policy and assists OIG components in the areas of budget formulation and execution, security, personnel, training, travel, procurement, property management, information technology, computer network communications, telecommunications, records management, quality assurance, internal controls, and general support.
- Office of the General Counsel provides legal advice to OIG management and staff. It also drafts memoranda on issues of law; prepares administrative subpoenas; represents the OIG in personnel, contractual, ethics, and legal matters; and responds to *Freedom of Information Act* requests.

D. Notable Highlights, Reviews and Recent Accomplishments

1. Safeguarding National Security and Ensuring Privacy and Civil Liberties Protections

The Department's national security efforts continue to be a focus of the OIG's oversight work, which has consistently shown that the Department faces myriad challenges in its efforts to protect the nation from attack.

USA PATRIOT Act, Section 1001

Section 1001 of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (USA PATRIOT Act) directs the OIG to receive and review complaints of civil rights and civil liberty violations by DOJ employees, to publicize how people can contact the OIG to file a complaint, and to send a semiannual report to Congress discussing the OIG's implementation of these responsibilities.

In September 2017, the OIG issued its most recent report, which summarized the OIG's Section 1001 activities from January 1, 2017, to June 30, 2017. The report described the number of complaints the OIG received under this section, the status of investigations conducted by the OIG and DOJ components in response to those complaints, and an estimate of the OIG's expenses for conducting these activities.

During this period, the 622 complaints were processed. Of the 622 complaints, 572 were not within OIG's jurisdiction or not warranting further review, 50 complaints were within the OIG's jurisdiction warranting review, 48 were management issues referred to DOJ components for handling, and 2 possible Section 1001 complaints warranted investigations by DOJ components. The OIG referred two Section 1001 complaints to the BOP for further investigation, one of which remains pending.

Foreign Agents Registration Act (FARA)

In July 2017, the DOJ Inspector General testified before the U.S. Senate Committee on the Judiciary concerning, "Oversight of the Foreign Agents Registration Act and Attempts to Influence U.S. Elections: Lessons Learned from Current and Prior Administrations." During the hearing, the Inspector General discussed the September 2016 audit of the National Security Division's (NSD) enforcement of FARA. The OIG initiated this review in response to a requirement by the U.S. House of Representatives Committee on Appropriations that the OIG review DOJ's enforcement of FARA. The Inspector General discussed the progress made by NSD and the Department in addressing the audit recommendations, and the abilities of DOJ to enforce FARA as well as administer and monitor FARA registrations.

Overall, the OIG concluded that DOJ lacks a strategy for the enforcement of the FARA strategy, that it must be developed and integrated into the overall national security efforts. Specifically, the OIG found that the number of FARA registrations has declined in the last two decades, and prosecutions and other enforcement actions are rare. The OIG also believes NSD needs to improve its controls and oversight of FARA registrations, particularly its efforts to ensure the timely submission of required documents and its inspections of registered foreign agents. The OIG made 14 recommendations to help improve NSD's enforcement and administration of FARA. The final report can be found on the OIG website [here](#).

The Inspector General expressed to the Committee that the OIG will continue to monitor the efforts of the NSD to address the outstanding issue areas, and to conduct ongoing oversight to ensure that the Department fully implements all of the report recommendations. The written statement of the Inspector General at this hearing can be found on the OIG website [here](#).

Audit of the Department of Justice's Handling of Known or Suspected Terrorists admitted into the Federal Witness Security Program

The Federal Witness Security Program (WITSEC Program) was established to provide for the security, health and safety of government witnesses whose lives are at risk due to providing testimony. Since it began in 1971, over 8,700 witnesses, family members, and others have been admitted into the WITSEC Program. Within this group are known or suspected terrorists (KST) who have agreed to testify.

In May, 2013, the OIG issued an interim report on the Departments handling of KSTs that were admitted into the USMS WITSEC Program. The OIG made 16 recommendations to the Office of the Deputy Attorney General, improving information sharing among those agencies responsible for WITSEC.

In this latest report dated September 2017, the OIG followed up on the findings from the May 2013 report to determine if the risks identified were sufficiently corrected by the FBI, USMS, and the Office of Enforcement Operations (OEO). The objectives of the OIG Audit were to evaluate how the Department: (1) handled KSTs admitted into the WITSEC program; (2) practiced watchlisting and processing encounters with this WITSEC group; and (3) mitigated risk to the public through the management of the high-risk WITSEC participants.

The OIG identified some concerns regarding the administration of the WITSEC program. The system that USMS utilized is not sufficient to track the documents provided or collect from WITSEC participants. We made eight new recommendations to USMS, FBI, and OEO to further improve sharing information regarding KST WITSEC participants.

2. Enhancing Cybersecurity in an Era of Increasing Threats

The Department will be challenged to sustain a focused, well-coordinated cybersecurity approach for the foreseeable future. Cybersecurity is a high risk area across the federal government and the Department must continue to emphasize protection of its own data and computer systems, while marshalling the necessary resources to combat cybercrime and effectively engaging the private sector.

Digital Forensics and Cyber Crime Investigations

The Investigations Division's Cyber Investigations Office (INV/Cyber) continues to conduct computer forensic examinations and mobile device forensic examinations for over 200 pieces of digital evidence annually, which includes computers, hard drives, cell phones, and other electronic media. The INV/Cyber reviews numerous referrals from the Justice Security Operations Center (JSOC) regarding the leak or spillage of Personally Identifiable Information and other sensitive DOJ data and makes appropriate disposition in consultation with Investigations Division senior officials. During FY17, INV/Cyber Special Agents began conducting cyber-crime investigations, including attempted intrusions into the Department's network and spoofing of Department e-mail addresses to send child exploitation images to employees.

INV/Cyber will continue to build its expertise and work with the JSOC to identify potential cyber-crime cases deemed appropriate for investigation, such as unauthorized access, network intrusion, child exploitation, and other potential violations of 18 USC 1030.

Federal Information Security Modernization Act Audits

The *Federal Information Security Modernization Act* (FISMA) requires the OIG for each agency to perform an annual independent evaluation of the agency's information security programs and practices. The evaluation includes testing the effectiveness of information security policies, procedures, and practices of a representative subset of agency systems. OMB is responsible for the submission of the annual FISMA report to Congress. The Department of Homeland Security (DHS) prepares the FISMA metrics and provides reporting instructions to agency Chief Information Officers, Inspectors General, and Senior Agency Officials for Privacy. The FY 2017 FISMA results were submitted to the OMB by October 31, 2017.

During FY 2017, the OIG issued twelve separate reports for its reviews of the DOJ's various information security programs, including DEA's information security program and El Paso Intelligence Center Seizure System; the FBI's information security program, Risk Vision-Secret System, and an IC system; and the Justice Management Division's (JMD) information security program and JMD's Joint Biometric Data Exchange Hosting Environment. Within these components, the OIG selected for review the following three sensitive but unclassified systems:

(1) BOP's Electronic Medical Records System; (2) ENRD's Justice Consolidated Office Network; and (3) OJP's Bulletproof Vest Partnership Program System. The OIG plans to issue reports this FY evaluating each of these systems as well as reports on each component's information security program.

Insider Threat Prevention and Detection Program

The Insider Threat Prevention and Detection Program (ITPDP) is designed to deter, detect, and mitigate insider threats from DOJ employees and contractors who would use their authorized access to do harm to the security of the U.S., which can include damage through espionage, terrorism, unauthorized disclosure of information, or through the loss or degradation of departmental resources or capabilities. While the initial focus was DOJ classified information and networks, it has expanded to unclassified sensitive information.

There are two parts to OIG's role in the DOJ ITPDP. One is compliance with DOJ Order 0901 that requires OIG to work with the Department in its efforts to monitor user network activity relating to classified material and networks. The reporting, training, and coordination requirements in this first role are being implemented by Management & Planning Division's Office of Security Programs. The second part of the ITPDP involves the INV/Cyber, which has representatives who act as law enforcement liaisons to the ITPDP relating to Insider Threat referrals. During FY17, INV/Cyber Special Agents began conducting Insider Threat investigations, which involve sensitive and often times classified matters.

Cyber Victim Notification and Engagement

The OIG is conducting an audit of the FBI's cyber victim notification and engagement. The preliminary objective is to evaluate the FBI's processes and practices for notifying and engaging with victims of cyber intrusions.

3. Managing an Overcrowded Federal Prison System in an Era of Declining Resources

The Department continues to face challenges within the federal prison system. The Department projects that the costs of the federal prison system will continue to increase in the years ahead. Ultimately, this cost is consuming a large share of the Department's budget. Another challenge continues to be the significant overcrowding in the federal prisons, which potentially poses a number of important safety and security issues. The following are some examples of the OIG's oversight efforts in this critical challenge area.

Review of the Federal Bureau of Prisons' Use of Restrictive Housing for Inmates with Mental Illness

In July 2017 the OIG conducted a review to inspect the BOP's use of Restrictive Housing Units (RHU) for inmates with mental illness, including trends in the use of restrictive housing and the screening, treatment, and monitoring of inmates with mental illness who are housed in RHUs. We found significant issues with the adequacy of the BOP's policies and its implementation efforts in this critical area.

Results of the review showed that the current BOP policies do not adequately address the confinement of inmates with mental illness in RHUs, and the BOP does not effectively track or monitor mentally ill inmates. Additionally, the institutional staff fails to document mental disorders; thus, they cannot accurately determine the number of mentally ill inmates. The BOP has made changes that will help mitigate the mental health concerns for inmates in RHUs. These changes include averting inmates with serious mental illness from placement in traditional RHUs

into alternative programs such as secure residential mental health treatment programs. The OIG made 15 recommendations to the BOP to improve its screening, treatment, and monitoring of inmates with mental illness housed in RHUs.

Audit of the Federal Bureau of Prisons Residential Reentry Center Contract Awarded to Centre, Inc., Fargo, North Dakota

In June 2017, the OIG completed an audit of the BOP's contract awarded to Centre, Inc., (Centre) to operate and manage a Residential Reentry Center (RRC) located in Fargo, North Dakota (Fargo RRC). These centers assist inmates with providing structure, a supervised environment, and support in job placement, counseling, and other self-improvement services helping the inmates successfully reenter the community after their release.

The audit was conducted to assess BOP's administration of, and Centre's performance and compliance with the terms, conditions, laws, and regulations applicable to this contract. The OIG assessed BOP's ability to provide contract administration and oversight of the Fargo RRC operations and the contractor's performance in the following areas: (1) general RRC operating procedures, (2) programs and services, (3) resident accountability, (4) staffing, (5) billing accuracy, and (6) subsistence collection.

The audit determined that BOP did not effectively monitor Centre's compliance with the Statement of Work (SOW) for the Fargo RRC. The audit showed: (1) BOP's full monitoring procedures contained in its Community Corrections Manual (CCM) were sufficient to effectively assess the RRC's compliance with the SOW; (2) BOP's Residential Reentry Management (RRM) office did not utilize the procedures outlined in the CCM to monitor the Fargo RRC; (3) none of BOP's monitoring reports identified the deficiencies we found during our audit; (4) BOP did not consistently comply with the CCM requirements for granting subsistence reductions and waivers, resulting in unrecognized potential cost savings of \$26,114 over the first 15 months of the contract period; (5) BOP incurred interest penalties for late payments; (6) BOP's contract monitoring and management identified deficiencies with the quality of Centre's inmate programming and compliance with the SOW; and (7) Centre is required by the SOW to provide Transition Skills programming for inmates focusing on common issues inmates encounter during their transition back into the community. Fargo RRC's Transition Skills program did not comply with the SOW requirements to conduct the program in a group setting for 9 weeks. The BOP was in agreement with the OIG's 14 recommendations.

Review of the Department's Implementation of the Principles regarding Prosecution and Sentencing Reform under the Smart on Crime Initiative

In August 2013, the DOJ initiated the *Smart on Crime*, highlighting five principles to reform the federal criminal justice system. In a report from the OIG dated June 20, 2017, a review was conducted to evaluate the Department implementation of the first two principles of *Smart on Crime* and the impact of changes to federal charging policies and practices within the 94 USAO districts. We also assessed the implementation and impact of the policy that required prosecutors to consider certain factors before filing a recidivist enhancement that would increase the sentence of a drug defendant with a felony record pursuant to 21 U.S.C. § 851.

The Attorney General issued a new charging and sentencing policy on May 10, 2017, to all federal prosecutors rescinding the specific charging policies that are outlined in the *Smart on Crime* initiative.

The OIG found that while DOJ issued policy memoranda and guidance to reflect its *Smart on Crime* policies, the U.S. Attorneys' Manual (USAM), the federal prosecutor's primary guidance

document, was not revised until January 2017, more than 3 years after *Smart on Crime* was launched, even though Department officials established a deadline of the end of 2014 to do so.

4. Strengthening the Relationships between Law Enforcement and Local Communities and Promoting Public Trust

The Department must work through critical issues to determine how to best use its limited but substantial resources to help foster partnerships, support law enforcement efforts across the country, and ensure confidence in community-police relations. Effective policing at the state and local level contributes significantly to the success of law enforcement efforts at the federal level.

Audit of the Cook County State's Attorney's Office's Equitable Sharing Program Activities Chicago, Illinois

In August 2017, the OIG completed an audit on the use of DOJ equitable sharing revenues by the Cook County State's Attorney's Office (CCSAO) located in Chicago, Illinois. Equitable sharing revenues represent a share of the proceeds from the forfeiture of assets seized in the course of certain criminal investigations. As of December 1, 2013, the CCSAO reported a beginning balance of \$2,106,313 in DOJ equitable sharing funds on hand. During the period of December 1, 2013, through November 30, 2016, the CCSAO received a total of \$880,199 in DOJ equitable sharing revenues to support law enforcement operations. During the same period, the CCSAO reported expenditures of \$1,162,018 in equitable sharing funds.

This audit was conducted to assess whether the CCSAO properly accounted for equitable sharing funds and used such revenues for allowable purposes as defined by the applicable regulations and guidelines. Our audit examined activities occurring between December 1, 2013, and November 30, 2016. The audit determined that the CCSAO did not fully comply with the DOJ guidelines we reviewed, including those for accounting for equitable sharing receipts and the allowable use of equitable sharing funds.

There were five things determined: (1) the CCSAO did not record equitable sharing funds within the official Cook County accounting system as required by program guidelines; (2) the CCSAO had an outdated internal equitable sharing policy that lacked guidance for basic procedures and was not distributed to appropriate staff; (3) the CCSAO's DOJ equitable sharing funds were not included in the Cook County Single Audit Reports for FY 2014 and FY 2015; (4) the CCSAO used DOJ equitable sharing funds to pay for the salary and fringe benefit costs of an officer, which is a violation of equitable sharing guidelines. As a result, we questioned \$97,997 in personnel costs; and (5) the CCSAO spent equitable sharing funds on state seizure-related legal notice publications and these are costs for which the Illinois State Police later provides reimbursement. Because reimbursed funds have not been returned to the CCSAO's DOJ equitable sharing fund, we questioned the \$29,083.

The OIG report identified a total of \$127,080 in dollar-related findings and contains seven recommendations addressing the weaknesses that were identified. The CCSAO's office agrees with the OIG's recommendations.

Audit of the Office on Violence Against Women and the Office of Justice Programs Awards to the Seneca-Cayuga Nation, Grove, Oklahoma

The OIG completed an audit in August 2017, pertaining to four grants awarded by the Office on Violence Against Women (OVW) and the Office of Justice Programs (OJP) to the Seneca-Cayuga Nation (SCN) (formerly known as the Seneca-Cayuga Tribe of Oklahoma) headquartered in Grove, Oklahoma. The SCN was awarded \$1.9M and as of January 25, 2017, the SCN had drawn down \$1.7M.

The goals of the audit were to determine: (1) whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the grant; and (2) to determine whether the grantee demonstrated adequate progress towards achieving program goals and objectives. We assessed their performance in the following areas of grant management: (1) program performance, (2) financial management, (3) expenditures, (4) budget management and control, (5) drawdowns, and (6) federal financial reports.

After assessing the policies and procedures, accounting records, and financial and progress reports the conclusion was SCN's management of federal awards needed improvement. The areas we reviewed were found to be non-compliant with deficiencies in: indirect costs, budget management, compliance with special conditions, and direct cost expenditures. Due to these deficiencies, it was determined there was a total of \$178,395 in questioned costs. The Seneca-Cayuga Nation was in agreement with the OIG's recommendations.

Investigative Summary Findings of Misconduct by an FBI Senior Executive

The OIG completed their investigation in February 2017 of an FBI senior executive based on information it received that, among other things, the executive had not properly recused herself from matters involving a contract company that employed her husband.

The OIG investigation found that the executive failed to disqualify herself from participating in matters involving the FBI contractor that employed her husband, and that she created the appearance of a conflict of interest by failing to obtain a waiver allowing such participation. The OIG also found that the executive directed subordinate employees to draft official records stating that she was recused from matters involving the contractor, when in fact she took no official action to do so, or to obtain the required waiver. Prosecution was declined.

In the course of its investigation, the OIG also found that the executive failed to report the source of her husband's earned income on annual federal ethics filings, as required by federal ethics regulations and FBI policy, over the period from 2010 through 2014. The OIG has completed its investigation and provided its report to the FBI for appropriate action.

ATF Confidential Informants

The OIG completed an audit report in March 2017 of the ATF's management and oversight of its confidential informants (CI). While ATF's CI policies were generally aligned with the Attorney General's Guidelines Regarding the Use of Confidential Informants (AG Guidelines), the audit concluded that ATF was not able to administer its CI Program in a manner reflective of the importance of the program, or its risks. Specifically, the audit found that ATF's maintenance of its CI Program information was heavily dependent on hard-copy files and an unsophisticated automated system, which impeded ATF's ability to manage and oversee its CI Program as a whole. Notably, ATF could not efficiently identify and track total payments made to individual CIs.

While the OIG did not examine whether ATF provided incorrect CI payment information during any criminal proceedings, it concluded that ATF's information environment lacked sufficient safeguards to ensure that complete and accurate information was consistently available to prosecutors for use during criminal proceedings. Further, ATF Headquarters officials did not have an adequate method to verify that certain CIs, such as long-term CIs who have been used for more than 6 consecutive years and CIs who hold a high-level position in a criminal enterprise, received enhanced oversight. ATF also lacked reliable information on the total number of foreign national CIs, which prohibited ATF Headquarters from properly managing the

CIs, and from ensuring appropriate coordination with DHS. Similarly, ATF also lacked accurate information related to higher-risk CIs, such as CIs who are also Federal Firearms Licensees and CIs who were used by international ATF offices.

While ATF has begun implementing a new automated system, the system is still in its infancy and several enhancements are necessary to address the OIG's relevant findings. The OIG made five recommendations to ATF to improve the policies and management of its Confidential Informant Program. ATF agreed with all of them.

Administration of the September 11th Victim Compensation Fund

In September 2017, the OIG issued an audit report examining DOJ's administration of the *James Zadroga 9/11 Health and Compensation Act of 2010* Compensation Fund, which was re-authorized by the Congress to accept claims through December 2020. Congress provided an additional \$4.6 billion bringing the overall total to \$7.375 billion. As part of this audit, the OIG reviewed how the Civil Division and the Special Master manage the fund, as well as how JMD supports the Victim Compensation Fund (VCF) operations through legal and administrative contracts.

The OIG determined that the VCF failed to consistently maintain in its Claims Management System support of some eligibility and compensation decisions. Certain claims failed to show proof of presence at any of the September 11th attack sites, or of a physical condition brought on by being exposed to September 11th attack sites. Other claim files included the status of ongoing claimant litigation, which the Zadroga Act required to be resolved before a claimant could receive an award. Some claims failed to show eligibility or compensation approval of the Special Master. We concluded that the VCF was operating with an increased risk of errors causing erroneous award decisions or ability to substantiate such decisions in later appeals or reviews.

During the period covered by the audit, we believe the VCF made some changes that would affect the VCF decision-making process. Throughout the audit VCF brought to our attention that all claims are evaluated individually, yet we identified systemic flaws affecting their process. We also discovered that employees of VCF were transmitting documents containing personally identifiable information (PII) to private e-mails from DOJ servers. During the audit we did not identify any flaws with how the contracts totaling nearly \$60 million were awarded and monitored by JMD. We also found that the Civil Division issued three independent non-competitive neutral service contracts. The Civil Division told the OIG that they relied on the Special Master to justify awarding the contracts.

Our report makes three recommendations to the VCF regarding its claims management process and four recommendations to the Civil Division regarding its administration of future VCF contracts.

U.S. Penitentiary Lieutenant Arraigned on Excessive Force and Obstruction of Justice Charges

A senior correctional officer with the U.S. Penitentiary in Atlanta, Georgia, was arraigned October 24, 2017, charged with assaulting an inmate, writing false statements and lying to investigators. The indictment also accuses the Lieutenant of intentionally impeding and obstructing the investigation of the incident with the false statements.

The case is being investigated by the DOJ OIG and the FBI.

Former BOP Employee in Texas Sentenced for Engaging in Sexual Acts with an Inmate

On November 5, 2017, a BOP Case Manager was sentenced to 12 months in federal prison after pleading guilty to sexual abuse of a ward in November 2016. At the time of the incidents the inmate was being supervised by the case manager.

The Case Manager was ordered to surrender to BOP on December 19, 2017.

Inmate Sentenced to Twenty Years' Imprisonment in Connection with Racketeering Offenses Committed from Miami Federal Prison

On November 14, 2017, an inmate was sentenced to 20 years and incarcerated at the Federal Detention Center in Miami, Florida, charged with organizing and leading a prison-based criminal enterprise that engaged in mail fraud, wire fraud, interstate transportation of stolen property and the sale of stolen goods.

The inmate pled guilty to avoid the Racketeering Influenced and Corrupt Organizations (RICO) Act. The inmate recruited multiple co-conspirators operating at his discretion in South Florida, Georgia and New York. Victim companies were directed to ship retail items and jewelry to these co-conspirators. The fraudulently obtained goods were valued at more than \$10 million, approximately \$2.5 was recovered at the time of sentencing. The inmate was ordered to pay over \$10 million in restitution.

5. Coordinating within the Department and Across Government to Fulfill the Department's Mission to Combat Crime

Joint Review on Domestic Sharing of Counterterrorism Information

In response to a Congressional request, the Inspectors General of the Intelligence Community, DOJ, and DHS initiated a coordinated, joint review focusing on domestic sharing of counterterrorism information. The objectives of this review were to: (1) identify and examine the federally supported field-based intelligence entities engaged in a counterterrorism information-sharing to determine their overall missions, specific functions, capabilities, funding, and personnel and facility costs, (2) determine whether counterterrorism information is being adequately and appropriately shared with all participating agencies, and (3) identify any gaps and/or duplication of effort among the entities.

In March 2017, the OIG's found that federal, state, and local entities are committed to sharing counterterrorism information by undertaking programs and initiatives that have improved information sharing. However, several areas were identified in which improvements could enhance the sharing of counterterrorism information: (1) federal, state, and local entities actively involved in counterterrorism efforts must understand each other's roles, responsibilities, and contributions, especially when multiple agencies are involved in complex investigations; (2) the DHS Intelligence Enterprise—the integrated function of DHS intelligence components and programs—is not as effective and valuable to the IC as it could be; (3) DOJ can improve its counterterrorism information sharing efforts by implementing a consolidated internal DOJ strategy and evaluating the continued need and most effective utilization for the USAOs Anti-Terrorism Advisory Council meetings; (4) the Office of the Director of National Intelligence's (ODNI) Domestic DNI Representative Program is hindered by large geographic regions, as well as the lack of a clear strategic vision and guidance; and (5) at the state and local level, fusion centers are focused on sustaining operations rather than enhancing capabilities due to unpredictable federal support.

The report makes 23 recommendations to the components of ODNI, DHS, and DOJ to help improve the sharing of counterterrorism information and ultimately, enhance the government's ability to prevent terrorist attacks. The components agreed with all 23 recommendations.

6. Administering and Overseeing Contracts and Grants

The OIG's recent oversight work assists the Department in its efforts to ensure that taxpayer funds are protected from fraud, mismanagement, and misuse. It is essential that the Department continue to manage its resources wisely and maximize the effectiveness of its programs regardless of the Department's budget environment.

DOJ OIG Audit of Crime Victims Fund Grant to the California Governor's Office of Emergency Services Results in Repayment Totaling \$452,464

On November 7, 2017, as a result of a DOJ OIG grant audit, the California Governor's Office of Emergency Services (Cal OES) has returned \$452,464 to the DOJ. In February 2017, the OIG's audit report evaluated four sub-grants from Cal OES to the Indian Child Welfare Consortium (ICWC) in Temecula, California, designated to facilitate the provision of therapeutic clinical services or culturally centered services to Native American child abuse victims. The \$553,386 in funding originated from the Crime Victims Fund (CVF), which serves as a major funding source for victim services across the country.

The OIG audit found that the accounting records the ICWC were maintaining were un-auditable, containing significant deficiencies; contractor billings with excessive billing; and ICWC expenses that lacked supporting documentation. In addition, a conflict of interest was found between ICWC's Executive Director and a contractor, who were married;

Due to these findings and others, the OIG questioned the entire grant that Cal OES disbursed to ICWC. According to DOJ, the funds that Cal OES repaid were deposited back into the CVF in FY 2017.

Audit of the Office on Violence Against Women Grants Awarded to the North Carolina Coalition against Domestic Violence, Durham, North Carolina

The OIG released a report in July 2017, pertaining to three grants awarded to the North Carolina Coalition Against Domestic Violence (Coalition) in Durham, North Carolina, by the OVW. As of February 14, 2017, the Coalition had drawn down \$983,434 of a combined \$1.3M for three grant awards.

This audit was conducted to: (1) determine whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the grant; and (2) to determine whether the grantee demonstrated adequate progress towards achieving program goals and objectives. To complete this audit, performance in the following areas of grant management were assessed: (1) program performance, (2) financial management, (3) expenditures, (4) budget management and control, (5) drawdowns, and (6) Federal Financial Reports.

We concluded that the Coalition generally complied with essential grant requirements and conditions. However, they could not provide adequate documentation to support all the program accomplishments. We also found instances where the Coalition did not follow their own financial policies and procedures requiring the review of reconciled credit card report forms. The Coalition was in agreement with the two recommendations from the OIG.

Audit of the Federal Bureau of Investigation's Aircraft Lease Contract Awarded to Midwest Jet Center, LL, DBA Reynolds Jet Management

In June 2017, the OIG completed an audit of aircraft lease contract between the FBI and Reynolds Jet Management (RJM). RJM is an aircraft management and jet charter company from whom the FBI leased a Gulfstream G-V (G5) jet. For the period of January 31, 2016, to July 30, 2016, the FBI spent \$2.4 million for the lease of the G5 aircraft. Previously, the FBI leased this aircraft under a different contract from RJM from October 2010 through January 30, 2016.

This audit was conducted to: (1) establish whether the FBI followed federal regulations during the contract award and administration processes, (2) evaluate the competence of the FBI's contract oversight, and (3) conclude whether RJM properly invoiced the government and fulfilled the terms and conditions of the contract award.

The audit determined there were deficiencies with the award and oversight of the FBI's lease of the G5 aircraft to include non-compliance with the Federal Acquisition Regulation (FAR). The OIG determined that: (1) the deficiencies indicate inadequacies in the FBI's contract administration practices; (2) the contract action by the FBI was not awarded in accordance with the FAR requiring the proper contracting personnel to approve a sole source justification prior to awarding the contract. The sole source justification documents were dated June 2016—nearly 5 months into the 6-month lease; (3) the contract was not formally awarded by the FBI until approximately 1 month after the period of performance began; (4) the FBI did not include specific performance metrics in the contract; (5) FBI missions were negatively impacted by the downtime for unscheduled maintenance of the G5 aircraft during the period of performance. The FBI's aircraft log reflected that the G5 aircraft leased from RJM was not available to the FBI for 44 days in the period of performance, equating to approximately \$580,000 of the value of the contract. The FBI did not have specific performance metrics in the contract so they had no recourse for the considerable downtime of the G5 aircraft leased from RJM. It was determined that the stated terms and conditions of the contract were complied with by RJM.

Additionally, it was determined that: (1) the FBI's execution of its contract administration responsibilities were weak; (2) the FBI did not complete a comprehensive bilaterally agreed-upon pre-inspection of the G5 aircraft. At the conclusion of the lease, needed repairs to the aircraft were identified that RJM, claiming they were in excess of normal wear and tear, and submitted requests to the FBI for \$2.4 million. The accuracy of RJM's request of exceeding normal wear and tear was not provable without documentation showing a pre-inspection of the aircraft by both parties. The FBI maintains these requests are excessive and include items that should be considered normal wear and tear. As of January 2017, the FBI and RJM had not reached an agreement regarding the request. We also determined that the FBI did not: (1) adequately review invoices, (2) pay invoices in a timely manner, (3) maintain sufficient documentation in the contract file to show a complete history of the contract action, or (4) enter accurate information into the Federal Procurement Data System—all of which are in non-compliance with the FAR.

DOJ OIG Releases Report on the Risks Associated with the Office of Justice Programs' Management of the Crime Victims Fund Grant Programs

The CVF was created by the *Victims of Crime Act of 1984* (VOCA) as a separate account funded entirely from federal criminal fees, forfeited bail bonds, penalties, gifts, donations, and special assessments collected by USAOs, federal courts, and BOP. The CVF receives no tax dollars and is used to support crime victims through DOJ programs and state and local victim services.

In FY 2015, Congress increased the amount of CVF funds available for obligation to more than \$2.36 billion, thereby tripling the prior year's funding. The funding increase brought on an entirely new challenge for the Office for Victims of Crime (OVC), to manage a considerably larger grant funding, and to monitor grant recipient and sub recipient performance. The OIG accepted this audit to accomplish three things: (1) evaluate the control processes in place for the solicitation, peer review, and award of CVF-funded grants; (2) evaluate the oversight and monitoring of the crime victim grant funds and grantees; and (3) assess the risk among grant recipients of CVF-funded grants.

We found OVC to have sufficient internal control processes, that CVF made progress in meeting new Congressional requirement for CVF grant recipients, and that OVC required grant recipients to establish plans for monitoring sub recipients, providing data on their performance. Additionally, we found areas that needed improvement regarding frequency and adequacy of OVC monitoring efforts.

The OIG made 11 recommendations to address the risk areas in the OJP management of the CVF fund.

BOP Audit on Contract with Spectrum Services Group, Inc., for Dental Services at the Federal Correctional Complex, Victorville, California

On March 2017, the OIG issued a report on the BOP's contract with Spectrum Services Group, Inc., (SSGi) which provided four dental assistants at the Federal Correctional Complex in Victorville, California (FCC Victorville).

The audit found that one of the four Dental Assistant positions specified in the contract was vacant for 25 of the 46 months from August 2012 through May 2016, or about 54 percent of the time. Despite these vacancies, contracting personnel consistently rated SSGi "Very Good" during its annual evaluation, and the evaluations included no mention of the vacancies. The audit found SSGi and the BOP attributed the Dental Assistant vacancies due to the stringent BOP vetting process, the remote location of FCC Victorville, and the fact that the position was located within a federal prison. Additionally, the report questioned whether BOP adequately assessed its Dental Officer and Dental Assistant needs at FCC Victorville prior to contract solicitation and award.

The audit concluded that these staffing shortages had measurable consequences at the institution, including one out of every four inmates (or nearly 1,000 inmates) being placed on a national wait list for routine dental care as of May 2016. Some inmates have been on this wait list since 2008. Other findings included (1) numerous discrepancies and inaccuracies between the sign-in log books for contractors and the Dental Assistants' timesheets, (2) SSGi did not comply with provisions of the Service Contract Labor Standards, and (3) BOP's non-compliance with FAR, including of the FAR's requirements for retaining information submitted by the contractor during the award process.

The report made nine recommendations to the BOP that address the deficiencies identified. The BOP agreed with all nine recommendations.

Audit of the National Institute of Justice's Grant Management

The OIG is auditing the National Institute of Justice's (NIJ) grant management. The preliminary objectives are to determine whether NIJ: (1) used fair and open processes to award competitive grants; (2) properly justified its decisions when awarding non-competitive grants; and (3) managed grant activities in compliance with legal, regulatory, and ethical requirements.

7. Using Performance-Based Management to Improve Department Programs

Performance-based management has been a long-standing challenge not only for the Department but across the entire federal government. OMB Circular No. A-11 and the *Government Performance and Results Modernization Act* (GPRA Modernization Act) place a heightened emphasis on priority-setting, cross-organizational collaboration to achieve shared goals, and the use and analysis of goals and measurements to improve outcomes. A significant management challenge for the Department is ensuring, through performance-based management, that its programs are achieving their intended purposes. The OIG will ensure that the Department is effectively implementing performance-based management and taking actions to meet the requirements of the GPRA Modernization Act.

Reviews of the Annual Accounting of Drug Control Funds and Related Performance Fiscal Year 2016

OIG report dated January 2017, contains the confirmation of DOJ's Assets Forfeiture Fund, Criminal Division, DEA, BOP, OJP, Offices of the United States Attorneys, Organized Crime Drug Enforcement Task Forces Program, and USMS's annual accounting of drug control funds and related performance for the fiscal year ended September 30, 2016. The OIG performed the attestation reviews. The report and annual detailed accounting of funds obligated by each drug control program agency are required by 21 U.S.C. §1704(d), as implemented by the Office of National Drug Control Policy Circular, *Accounting of Drug Control Funding and Performance Summary*, dated January 18, 2013. DOJ components reviewed, reported approximately \$7.8 billion of drug control obligations and 23 related performance measures for FY 2016.

The OIG prepared the confirmation review reports in accordance with confirmation standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. A confirmation review is substantially less in scope than an examination and, therefore, does not result in the expression of an opinion. We reported that nothing came to our attention that caused us to believe the submissions were not presented, in all material respects, in accordance with the requirements of the Office of National Drug Control Policy Circular, and as otherwise agreed to with the Office of National Drug Control Policy.

DOJ OIG Releases Report on DOJ's Compliance with the Digital Accountability and Transparency Act of 2014

On November 8, 2017, the OIG released a report examining DOJ's compliance with *Federal Funding Accountability and Transparency Act of 2006*, as amended by the *Digital Accountability and Transparency Act of 2014* (DATA ACT). The new act added new requirements for government-wide spending data standards, and mandated full publication of all spending data, with the intent in providing Americans with transparency as to how the federal government spends taxpayer dollars.

After reviewing a valid sample of spending data, it was determined that DOJ did submit complete and timely data to the Department of the Treasury's DATA Act broker as required by the DATA Act. DOJ also successfully implemented and used the government-wide financial data standards, but a material weakness was identified in internal controls that contributed to DOJ being materially noncompliant with standards for quality and accuracy of the data submitted.

The OIG made seven recommendations to DOJ to enhance its internal controls and improve the quality and accuracy of the data it submits to the DATA Act broker system. DOJ agreed with all of the recommendations.

8. Filling Mission Critical Positions Despite Competition for Highly-Skilled Professionals and Delays in the Onboarding Process

Findings of Misconduct by a Bureau of Prisons Physician for Providing Medication to a Bureau of Prisons Nurse for Unauthorized Purposes

In June 2017, the OIG completed an investigation based on allegations from the BOP that a physician with the United States Penitentiary (USP) provided medication to a USP nurse intended for inmates.

During the investigation the USP physician acknowledged providing a USP nurse with an injection of medication intended for BOP inmates. The OIG concluded that federal regulations prohibiting use of government property for unauthorized purposes, and BOP policy prohibiting dispensing medication to employees except in emergencies were violated by the USP physician.

Findings of Misconduct by a Chief Deputy U.S. Marshal for Having an Inappropriate Relationship With a Subordinate, Making False Statements to a Supervisor, and Submitting Misleading Statistics

In August 2017, the OIG completed an investigation based on information it received of a Chief Deputy U.S. Marshal (CDUSM) that the CDUSM engaged in misconduct by engaging in personal relationship with a subordinate, and then in order to secure additional funding for the fugitive task force that the CDUSM oversaw, personnel were directed to submit false statistics to the High Intensity Drug Trafficking Area (HIDTA) program.

The OIG was able to substantiate the allegation that the CDUSM engaged in an inappropriate relationship with a subordinate when the CDUSM admitted to the OIG to having engaged in the relationship. During the investigation, it was determined by the OIG that the CDUSM when directly asked by the CDUSM's supervisor about the intimate personal relationship false statements were provided. Also substantiated was the allegation that the CDUSM instructed personnel to submit false or misleading arrest statistics to HIDTA to secure increased funding. The OIG found that USMS policies were violated by the conduct of the CDUSM.

Findings Concerning Improper Hiring Practices, Inappropriate Interactions with Subordinates and a Contractor, and False Statements by a Senior Executive with the Executive Office for Immigration Review

In June 2016, the OIG completed their investigation of an Executive Office for Immigration Review (EOIR) senior executive, based on information it received from DOJ that the senior executive had engaged in: (1) inappropriate hiring practices, (2) used non-public information to benefit friends, (3) solicited and accepted gifts from subordinates, (4) maintained inappropriate relationships with subordinates, and (5) participated in an inappropriate quid pro quo scheme with a contract company.

The OIG concluded that on seven occasions the executive engaged in improper hiring practices when the merit system principles were disregarded by ignoring applicants with superior qualifications to hire close friends and associates as DOJ employees or DOJ contract personnel for the positions. It was also determined that a promotion was initiated by the executive for a friend and then promoted before they were eligible for promotion. Additionally the executive without adequate justification nominated a friend for a monetary award, and promoted a friend

who lacked qualifications for the position. The OIG further found that non-public information about job opportunities on a pending DOJ contract were disclosed to friends of the executive, the executive also advocated for increasing contractor salaries in support of friends. The OIG found that federal statutes, federal regulations, and DOJ policy were violated by the conduct of the executive. Prosecution of the executive was declined.

9. Whistleblower Ombudsperson

The OIG's Whistleblower program continues to be an important source of information regarding waste, fraud, and abuse within the Department, and to perform an important service by allowing Department employees to come forward with such information. As publicity about retaliation against whistleblowers from across the federal government continues to receive widespread attention, it is particularly important that the Department act affirmatively to ensure that whistleblowers feel protected and, indeed, encouraged to come forward.

The OIG plays a pivotal and particularly labor-intensive role in fielding and investigating, under the FBI Whistleblower Statute (5 U.S. C § 2303) and the FBI Whistleblower Regulations (28 C.F.R. Part 27), allegations of whistleblower retaliation against FBI employees. If a retaliation complaint states a cognizable claim, the OIG investigates the allegations "to the extent necessary to determine whether there are reasonable grounds to believe that a reprisal has been or will be taken" for a protected disclosure. 28 C.F.R. § 27.3(d). The OIG has 240 days to make this determination unless granted an extension by the complainant. *Id.* § 27.3(f).

The OIG is partnering with the FBI in the development of specialized training that will highlight the particular requirements applicable to FBI employees. Aggressive OIG efforts to enhance FBI employees' awareness of their rights will likely increase the number of whistleblower retaliation complaints this office receives each year. Protecting whistleblower rights has been one of the Inspector General's highest priorities since he took office. Unfortunately, with limited resources and staffing we have had to go beyond deadlines and obtain extensions from whistleblowers, further delaying the investigation and ultimate resolution of these cases. To strengthen the DOJ whistleblower program, we are requesting a program increase. Please refer to Section VI for more information.

The OIG also continues to utilize the tracking system developed through the OIG Ombudsperson Program to ensure that it is handling these important matters in a timely manner. The OIG continuously enhances the content on its public website, oig.justice.gov. The table below, pulled from our *Semiannual Report to Congress, April 1, 2017 thru September 30, 2017*, presents important information.

Whistleblower Program April 1, 2017 – September 30, 2017

Employee complaints received ¹	278
Complainants asserting to be whistleblowers ²	18
Employee complaints opened for investigation by the OIG	91
Employee complaints that were referred by the OIG to the components for investigation	109
Employee complaint cases closed by the OIG ³	91

The OIG continues to refine its internal mechanisms to ensure that the OIG is promptly reviewing whistleblower submissions and communicating with those who come forward with information in a timely fashion.

10. Congressional Testimony

The Inspector General and Deputy Inspector General testified before Congress on the following occasions:



- “Oversight of the Bureau of Prisons and Inmate Reentry” before the U.S. House of Representatives Committee on Oversight and Government Reform on December 13, 2017;

¹ Employee complaint is defined as an allegation received from whistleblowers, defined broadly as complaints received from employees and applicants with DOJ, or its contractors, subcontractors, or grantees, either received directly from the complainant by the OIG Hotline, the field offices, or others in the OIG, or from a DOJ component if the complaint otherwise qualifies and is opened as an investigation.

² These complainants may or may not qualify as whistleblowers under relevant laws.

³ This number reflects cases closed during the reporting period regardless of when they were opened.

- “Recommendations and Reforms from the Inspectors General” before the U.S. House of Representatives Committee on Oversight and Government Reform on November 15, 2017;
- “Oversight of the Foreign Agents Registration Act and Attempts to Influence U.S. Elections: Lessons Learned from Current and Prior Administrations” before the U.S. Senate Committee on the Judiciary on July 26, 2017;
- “Use of Confidential Informants at ATF and DEA” before the U.S. House of Representatives Committee on Oversight and Government Reform on April 4, 2017;
- “Examining Systemic Management and Fiscal Challenges within the Department of Justice” before the U.S. House of Representatives Committee on the Judiciary on March 21, 2017;
- “A Review of Investigations of the Osorio and Barba Firearms Trafficking Rings” before the U.S. House of Representatives Committee on Oversight and Government Reform on March 9, 2017;
- “Five Years Later: A Review of the Whistleblower Protection Enhancement Act” before the U.S. House of Representatives Committee on Oversight and Government Reform, Subcommittee on Government Operations on February 1, 2017; and
- “Empowering the Inspectors General” Oversight and Government Reform on February 1, 2017.

11. Support for the Department’s Savings and Efficiencies Initiatives

In support of DOJ’s SAVE initiatives, the OIG contributed to the Department’s cost-saving efforts in FY 2017, including:

- *Increasing the use of self-service online booking for official travel.* The OIG’s online booking rate at the end of FY 2017 official travel was 93%, for estimated savings of \$27 thousand over agent-assisted ticketing costs.
- *Using non-refundable airfares rather than contract airfares or non-contract refundable fares (under appropriate circumstances).* In FY 2017, the OIG realized cost savings of more than \$13 thousand by using non-refundable tickets.
- *Increased use of video conferencing.* The OIG saved training and travel dollars, as well as productive staff time while in travel status, by utilizing increased video teleconferencing for all applicable OIG-wide training.

Getting the most from taxpayer dollars requires ongoing attention and effort. The OIG continues to look for ways to use its precious resources wisely and to examine how it does business to further improve efficiencies and reduce costs.

E. Challenges

Like other organizations, the OIG must confront a variety of internal and external challenges that affect its work and impede progress towards achievement of its goals. These include the decisions Department employees make while carrying out their numerous and diverse duties, which affect the number of allegations the OIG receives, and financial support from the OMB and Congress.

The limitation on the OIG's jurisdiction has also been an ongoing impediment to strong and effective independent oversight over agency operations. While the OIG has jurisdiction to review alleged misconduct by non-lawyers in the Department, it does not have jurisdiction over alleged misconduct committed by Department attorneys when they act in their capacity as lawyers—namely, when they are litigating, investigating, or providing legal advice. In those instances, the IG Act grants exclusive investigative authority to the Department's OPR office. As a result, these types of misconduct allegations against Department lawyers, including any that may be made against the most senior Department lawyers (including those in Departmental leadership positions), are handled differently than those made against agents or other Department employees. The OIG has long questioned this distinction between the treatment of misconduct by attorneys acting in their legal capacity and misconduct by others. This disciplinary system cannot help but have a detrimental effect on the public's confidence in the Department's ability to review misconduct by its own attorneys.

The OIG's greatest asset is its highly dedicated personnel, so strategic management of human capital is paramount to achieving organizational performance goals. In the prior fiscal years, the OIG was very successful in recruiting and hiring high quality talent to fulfill its staffing complement. In this competitive job market, the OIG must make every effort to maintain and retain its talented workforce. The OIG's focus on ensuring that its employees have the appropriate training and analytical and technological skills for the OIG's mission will continue to bolster its reputation as a premier federal workplace, and improve retention and results. The length of time it takes to conduct more complex audits, investigations, and reviews is directly impacted by the number of experienced personnel the OIG can devote to these critical oversight activities.

II. Summary of Program Changes

Item Name	Description	Pos.	FTE	Dollars (\$000)	Page
Whistleblower	To enhance its whistleblower protection program by increasing staffing within the Oversight and Review (O&R) Division (6 positions will be 5 Attorneys and 1 Paralegal)	6		\$1,400	34
Total		6	0	\$1,400	

III. Appropriations Language and Analysis of Appropriations Language

The appropriation language states the following for the Office of the Inspector General:

For necessary expenses of the Office of Inspector General, \$95,866,000, including not to exceed \$10,000 to meet unforeseen emergencies of a confidential character.

A. Analysis of Appropriations Language

No substantive changes

IV. Program Activity Justification

A. Audits, Inspections, Investigations and Reviews

OIG	Direct Pos.	Direct FTE	Amount
2017 Enacted	470	430	\$95,583,000
2018 Annualized CR Level	470	430	\$94,934,000
Adjustment to base and Technical Adjustments	0	-15	(\$468,000)
2019 Current Services	470	415	\$94,466,000
2019 Program Increase	6	6	\$1,400,000
2019 Request	476	421	\$95,866,000
Total Change 2018-2019	6	6	\$932,000

<i>OIG Information Technology Breakout</i>	Direct Pos.	Direct FTE	Amount
2017 Enacted	12	12	\$9,611,009
2018 Annualized CR Level	18	18	\$10,297,610
Adjustments to Base and Technical Adjustments	0	0	\$963,591
2019 Current Services	23	23	\$11,261,201
2019 Request	18	18	\$11,261,201
Total Change 2018-2019	0	0	\$963,591

B. Program Description

The OIG operates as a single decision unit encompassing audits, inspections, investigations, and reviews.

C. Performance and Resource Tables

Performance materials will be provided at a later date.

D. Performance, Resources, and Strategies

Performance materials will be provided at a later date.

V. Program Increases by Item

Item Name: Whistleblower Protection

Strategic Goal(s) & Objective(s): Performance materials will be provided at a later date.

Organizational Program: OIG

Program Increase: Positions 6 Agt/Atty/Other 0/5/1 FTE 6 Dollars \$1,400,000

1. Description of Item

As part of the OIG's ongoing efforts to safeguard FBI and other DOJ whistleblowers from reprisal and to enhance training and outreach regarding such efforts, the OIG is requesting a Program Increase of \$1,400,000. Specifically, the OIG intends to enhance its whistleblower protection program by increasing staffing within the Oversight and Review (O&R) Division. The O&R Division currently has primary responsibility for handling whistleblower cases and also investigates other highly sensitive matters. The additional funding will enable the OIG to hire one supervisor, the equivalent of four full time investigative counsels, and one full-time analyst or paralegal specialist. The resources will enable the OIG to have a full-time supervisor for whistleblower matters, including the investigation of reprisal claims, the drafting of reports of investigation, and the maintenance of training and outreach programs. Most important, the additional resources will enhance the OIG's ability to keep pace with the increasing number of whistleblower reprisal claims—the direct result of better training, outreach, and the recent enactment of the *FBI Whistleblower Protection Enhancement Act of 2016*.

2. Justification

Whistleblowers provide an important public service to our nation by improving government efficiency, transparency, and accountability. These virtues not only save taxpayer dollars, but also more closely align the reality of federal executive agency operations with our nation's ideals, chief among them integrity and freedom from fear. The OIG has been at the forefront in recognizing the importance of whistleblowers and in its commitment to taking prompt action to pursue any allegations of reprisal against them.

Federal law generally prohibits retaliation against federal government employees or applicants for employment for reporting wrongdoing, or whistleblowing. 5 U.S.C. § 2302. Under this provision, most federal employees pursue whistleblower retaliation complaints with the Office of Special Counsel and the Merit Systems Protection Board. However, the FBI was excluded from this process; instead, the Attorney General was required, pursuant to 5 U.S.C. § 2303(b), to establish separate regulations to ensure that FBI employees are protected against retaliation for reporting wrongdoing. Under these regulations, codified at 28 C.F.R. Part 27, the OIG plays a pivotal and particularly labor-intensive role in fielding and investigating allegations of whistleblower retaliation against FBI employees. If a retaliation complaint states a cognizable claim, the OIG investigates the allegations “to the extent necessary to determine whether there are reasonable grounds to believe that a reprisal has been or will be taken” for a protected disclosure. 28 C.F.R. § 27.3(d). The OIG has 240 days to make this determination unless granted an extension by the complainant. *Id.* at § 27.3(f).

As part of its investigation, the OIG obtains relevant documents from the FBI and from any other relevant source, including the complainant. These documents may include, for example, e-mails and personnel files. The OIG interviews witnesses with relevant knowledge, typically including the complainant, the person(s) who allegedly retaliated against the complainant, and others (often other FBI employees working in the same field office) in a position to have knowledge of the relevant facts and circumstances.

If the OIG finds that there are no reasonable grounds to believe that a reprisal has been or will be taken, it provides a report to the complainant with factual and legal findings and conclusions justifying the termination of the investigation. If the OIG determines that there are reasonable grounds to believe that there has been or will be a reprisal for a protected disclosure, it sends a final report of its conclusions, along with any findings and recommendations for corrective action, to the Department's Office of Attorney Recruitment and Management. *Id.* at § 27.4(a).

The number of FBI whistleblower retaliation complaints has sky-rocketed in recent years. For example, the number of such complaints received by the OIG has risen from 5 in FY 2007 to 37 during the period from April 1, 2016 through March 31, 2017. Similarly, after accepting for investigation an average of two complaints per year between FYs 2007 and 2013, the OIG increased its acceptance of cases for investigation to nine complaints in FY 2014. Seven additional complaints were accepted for investigation in FY 2015, and nine more were added in FY 2016. As a result, O&R is currently investigating 13 separate whistleblower retaliation claims—a docket occupying approximately half of O&R's non-supervisory investigative staff (attorneys, agents, and analysts).

The OIG has many priorities competing for its limited time and staff resources. The O&R Division also investigates highly sensitive allegations involving DOJ employees, often at the request of the Attorney General, senior Department managers, or Congress, and regularly conducts systemic reviews of national security programs and other similarly complex and consequential matters. For example, the O&R Division is currently conducting a review of allegations regarding violations of DOJ or FBI policies and procedures in advance of the 2016 presidential election, including allegations regarding then-Director Comey's public announcements on July 5, 2016, and October 28, 2016, regarding the status of an investigation involving one of the presidential candidates. In recent years the O&R Division has been responsible for numerous national security reviews, including multiple reviews of the FBI's use of Section 215 authority under the *Foreign Intelligence Surveillance Act* (FISA), National Security Letters, and Section 702; the Department's use of material witness warrants in terrorism investigations; and the sharing of information among government agencies prior to the Boston Marathon bombing. Other major reviews undertaken by the O&R Division include the investigations of ATF's Operation Fast and Furious, DEA's responses to three deadly force incidents in Honduras, and improper hiring practices in various Department components. The O&R Division's ability to investigate and produce reports on such complex and consequential matters in a timely manner has been adversely impacted by the growing time commitment required to conduct FBI whistleblower retaliation investigations with existing staff resources.

The complexity of FBI whistleblower retaliation cases and the time required to investigate them varies from case to case but all of them require a substantial investment in time. Even the complaints that ultimately are not accepted for investigation because of a failure to meet the elements required under the DOJ regulations receive careful analysis by management in the O&R Division as well as the OIG Front Office, including the Inspector General, before a

declination decision is made. Where a complaint meets the requirements of the regulations and is accepted for investigation, it typically requires the attention of one attorney on at least a half-time basis (as well as additional part-time support from an agent, program analyst, and/or paralegal) for at least the 240-day investigation period provided under the regulations. Many cases require the full-time attention of an attorney for the entire investigative period. In short, whistleblower retaliation cases previously represented a small fraction of O&R's workload but now compose approximately half of the O&R docket in terms of attorney hours. The rapid expansion of this category of investigation is having an inevitable and growing impact on the ability of O&R to conduct investigations of other matters of great importance to the OIG and the Department.

This rapid increase in the FBI whistleblower caseload has complicated efforts to comply with the relevant regulatory timelines. As noted above, the regulations provide for the OIG to complete its investigation within 240 days unless the complainant consents to an extension. At current staffing levels, we are frequently required to request such extensions. The time required by the DOJ to complete FBI whistleblower retaliation cases was the subject of a recent critical Government Accountability Office (GAO) report, *Whistleblower Protection—Additional Actions Needed to Improve DOJ's Handling of FBI Retaliation Complaints*, GAO-15-112. While the OIG is only responsible for the intake and investigation phases of these cases and the time taken by the OIG to complete its role in this process was not the largest part of the problem cited by GAO, we are committed to improving the timeliness of OIG investigations.

The OIG requires additional resources to manage the growing whistleblower case load thoroughly, fairly, and expeditiously—a financial need made more urgent by three recent developments, each of which will likely further increase the number of FBI whistleblower cases the OIG receives: (1) amplified OIG outreach, training, and education efforts; (2) additional procedures to ensure whistleblowers have enhanced opportunities to seek a full OIG investigation; and (3) the recent enactment of the *FBI Whistleblower Protection Enhancement Act of 2016*, which increased dramatically the number of offices and officials to whom disclosures may be made in order to be deemed “protected” under the law. The OIG believes that these three factors, discussed in detail below, will accelerate the already sharp increase in the number of whistleblower retaliation complaints this office receives each year.

First, concerted OIG efforts to work with the FBI to enhance FBI employees' awareness of their rights will likely increase the number of whistleblower retaliation complaints this office receives each year. Protecting whistleblower rights has been one of the Inspector General's highest priorities since he took office. He established a Whistleblower Ombudsperson Program shortly after becoming Inspector General in 2012 and has been significantly ramping up training and awareness programs as well as the OIG's ability to thoroughly and efficiently respond to complaints of illegal retaliation against FBI whistleblowers. The Inspector General designated his Deputy to lead this aggressive program, and the OIG developed a video, entitled “Reporting Wrongdoing: Whistleblowers and their Rights,” which discusses whistleblower rights and protections applicable to all DOJ employees, and specifically points out where the rules for FBI employees differ from those applicable to others. The OIG assisted the FBI in creating a specialized training program that recently became required viewing for all FBI employees. This interactive program highlights the specific requirements and procedures for FBI whistleblowers, and gives them guidance as to how to make protected disclosures, recognize reprisal for having done so, and pursue corrective action with the appropriate office. The OIG also has worked with the FBI and other Department components to develop particularized training on whistleblower

rights and protections. The OIG has a dedicated "[Whistleblower Protection](#)" page on its website, available to FBI employees and others, with a section on FBI whistleblowers that we have enhanced to include additional links to the applicable law and regulations and other information specific to FBI employees. The OIG has also reached out to the whistleblower community, so that we can hear from them first-hand about issues and challenges that concern them. It is likely that these substantial and ongoing efforts to educate FBI and other DOJ employees regarding their rights and protections will generate further increases in the number of cognizable retaliation complaints received by the OIG, and increase the need for greater OIG staffing to address them.

Second, the OIG has instituted new procedures governing how we provide notification to complainants regarding a decision that investigation into a whistleblower reprisal complaint is not warranted—procedures that have increased and will no doubt continue to increase the number of whistleblower retaliation complaints this office investigates each year. A substantial proportion of the retaliation complaints submitted to the OIG do not require or call for the opening of an investigation because the facts alleged in the complaint, even if accepted as true, would not be sufficient to satisfy an essential element of a retaliation claim under the law. In the past, the OIG has closed such non-cognizable complaints by means of brief declination letters. In the interest of enhancing the transparency of our review process and giving whistleblowers the fullest possible opportunity to provide additional information that may be relevant to our determinations, the OIG is now providing whistleblowers more detailed information in our declination letters: identifying the deficiencies in complaints, including identifying the specific element(s) of a claim of reprisal under the regulations that are absent and informing the employee filing the complaint that we are providing them with an opportunity to submit any additional relevant information or comment on the OIG's initial determination prior to the OIG's declination of the complaint becoming final. These changes in practice go beyond the regulatory requirements, and will help the OIG ensure that all complainants have an opportunity to provide additional information or written comments before OIG closes their complaints consistent with our desire to provide the maximum possible support for whistleblowers from the FBI and throughout the DOJ. The GAO found that “if implemented effectively, these planned actions will help OIG ensure that all complainants have an opportunity to provide additional information or written comments before OIG closes their complaints and those complainants will receive the information they need to make decisions about their complaints.” This additional procedure increases the time needed for the initial review of all complaints and has already begun – by assisting complainants in converting facially non-cognizable claims into cognizable ones – to increase the number of cases the OIG accepts for full investigation.

A third factor referenced above that is likely to accelerate the already steep increase in the number of whistleblower retaliation complaints the OIG investigates each year is the recent enactment of the *FBI Whistleblower Protection Enhancement Act of 2016*, which increased the number of offices and officials to whom disclosures may be made in order to be deemed “protected” (Designated Recipients) to include, among many others potential recipients, any supervisor in the employee’s direct chain of command, up to and including the FBI Director and the Attorney General. Prior to the enactment of the *FBI Whistleblower Protection Enhancement Act of 2016*, the governing law severely restricted who qualified as a Designated Recipient, thereby significantly increasing the likelihood that a whistleblower claim would be rejected as non-cognizable during the initial OIG review and that an otherwise meritorious disclosure would receive no protection under the law. For example, a recent report by the GAO stated:

DOJ terminated at least 17 whistleblower complaints in recent years in part because a disclosure was made to someone in the employee's chain of command or management, such as a supervisor, who was not one of the nine high-level FBI or DOJ entities designated under the [FBI Whistleblower Regulations] to receive such disclosures. [D]ismissing retaliation complaints made to an employee's supervisor or someone in that person's chain of command leaves some FBI whistleblowers—such as the 17 complainants we identified—without protection from retaliation. By dismissing potentially legitimate complaints in this way, DOJ could deny some whistleblowers access to recourse, permit retaliatory activity to go uninvestigated, and create a chilling effect for future whistleblowers.

Notably, under the new law's expansive definition of "Designated Recipient," the disclosures at issue in the 17 whistleblower complaints described in the excerpt above—found wanting because made to someone in the complainant's chain of command—would, were they filed with the OIG today, likely be considered "protected" and result in full-blown whistleblower reprisal investigations.

Lastly, other federal mandates have expanded the OIG's responsibilities to include new categories of whistleblower retaliation cases. Section 828 of the *National Defense Authorization Act of 2013*, codified at 41 U.S.C. § 4712, and as amended by S. 795, requires the OIG to investigate certain whistleblower retaliation claims filed by an employee of a contractor, subcontractor, grantee, or sub grantee or personal services contractor with respect to any component of the Department. Given the already significant pressure on the O&R Division's docket of the FBI whistleblower reprisal cases, the OIG investigations currently are being handled by the OIG's Investigations Division, where they are similarly growing in number and taking an increasing amount of investigator time. And pursuant to Presidential Policy Directive/PPD-19, the OIG now has jurisdiction to investigate allegations that actions affecting access to classified information throughout the Department were taken in reprisal for protected whistleblowing, and the DOJ OIG is one of the designated offices to serve on PPD-19 external review boards from other agencies. O&R has already taken a leading role in completing two PPD-19 reviews and we believe that this number is likely to increase, perhaps significantly, involving cases both within and outside the Department as additional training and education is made available to make employees aware of this protection.

3. Impact on Performance

At current staffing levels, the rapid increase and expected further increase in FBI whistleblower cases—which OIG is required to investigate by regulation—inevitably reduces the other kinds of critical investigations that the O&R Division can undertake in a timely fashion. Without the requested increase, the OIG will not be able to expand our whistleblower oversight without adversely impacting our other responsibilities.

Funding
(Dollars in Thousands)

Base Funding

FY 2017 Enacted				FY 2018 President's Budget				FY 2019 Current Services			
Pos	Agt/Atty	FTE	\$0	Pos	Agt/Atty	FTE	\$0	Pos	Agt/Atty/Other	FTE	\$0
0	0/0	0	\$0	0	0/0	0	\$0	0	0/0/0	0	\$0

Personnel Increase Cost Summary

Type of Position	Modular cost per Position (\$000)	1 st Year Annualization	Number of FTE's Requested	FY 2019 Requested (\$000)	FY 2020 Net Annualization (change from 2019) (\$000)	FY 2021 Net Annualization (change from 2020) (\$000)
Attorney (905)	\$224	\$224	5	\$1,120	\$25	\$0
Paralegals/Other Law (900-998)	\$172	\$172	1	\$172	\$3	\$0
Total Personnel			6	\$1,292	\$28	\$0

Total Request for this Item

	P O S	Agt/Atty/Other	F T E	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2020 Net Annualization (Change from 2019) (\$000)	FY 2021 Net Annualization (Change from 2020) (\$000)
Current Services	0	0/0/0	0	\$0	\$0	\$0	\$0	\$0
Increases	6	0/5/1	6	\$1,292	\$108	\$1,400	\$28	\$0
Grand Total	6	0/5/1	6	\$1,292	\$108	\$1,400	\$28	\$0

VI. Program Offsets by Item

The Office of the Inspector General has no program offsets to submit in the FY 2019 budget request.

VII. APPENDIX

Statistical Highlights April 1, 2017 – September 30, 2017

The following table summarizes Office of the Inspector General (OIG) activities discussed in our most recent *Semiannual Report to Congress*. As these statistics and the following highlights illustrate, the OIG continues to conduct wide-ranging oversight of Department of Justice (Department) programs and operations.

April 1, 2017 – September 30, 2017	
Allegations Received by the Investigations Division ¹	5,918
Investigations Opened	166
Investigations Closed	166
Arrests	59
Indictments/Information	51
Convictions/Pleas	49
Administrative Actions	114
Monetary Recoveries	\$24,878,924.31
Audit Reports Issued	42
Questioned Costs	\$5,173,558
Funds for Better Use	\$1,504,312
Recommendations for Management Improvements	260
<i>Single Audit Act</i> Reports Issued	30
Questioned Costs	\$418,662
Recommendations for Management Improvements	55
Other Audit Division Reports Issued	1